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In re Application of
Whelen
Serial No.: 10/509,489
PCT No.: PCT/CA02/01817
Int. Filing Date: 27 November 2003
Priority Date: 05 March 2002
Attorney's Docket No.: NONE
For: EAR FLAPS FOR HELMETS

DECISION ON
RENEWED PETITION
UNDER 37 CFR 1.137(b)

This decision is responsive to the renewed petition under 37 CFR 1.137(b) filed 17 October 2005. The \$750 petition fee was paid at the time of the earlier filed petition.

BACKGROUND

On 27 November 2002 applicants filed international application PCT/CA02/01817, which claimed priority of earlier Canadian application was filed 05 March 2002. A copy of the international application was received by the United States Patent and Trademark Office from the International Bureau on 12 September 2003. The thirty-month period for paying the basic national fee for the national stage in the United States expired at midnight on 05 September 2004.

On 29 September 2004, applicants filed a transmittal letter for entry into the national stage in the United States. The transmittal letter was accompanied by a declaration, and a check for \$460 for the basic national fee. These papers were assigned Application No. 10/509,489.

On 30 March 2005, a "NOTIFICATION OF ABANDONMENT" (form PCT/DO/EO/909) was mailed to applicant indicating tha the application was abandoned for failure to provide a copy of the international application by 30 months from the earliest claimed priority date.

On 24 May 2005, applicant filed a petition to revive. That petition was dismissed for failure to include a statement that the entire delay was unintentional.

On 17 October 2005, applicant filed the current petition.

DISCUSSION

A petition under 37 CFR 1.137(b) requesting that the application be revived on the grounds of unintentional delay must be filed promptly after the applicant becomes aware of the abandonment and such petition must be accompanied (1) by a statement that the entire delay in filing the required reply from the due date for the reply until the filing of a grantable petition was unintentional, (2) by a proper reply, (3) by the petition fee required by law (37 CFR 1.17(m)), and (4) if the international filing date of the application is before June 8, 1995, any petition to revive under 37 CFR 1.137(b) must be accompanied by a terminal disclaimer and small entity fee of \$55

Applicants provided a proper reply and the petition fee with the earlier filed petition. Applicants have now provided a statement that the entire delay in filing the required reply from the due date for the reply until the filing of this petition was unintentional.

CONCLUSION

The petition to revive the application abandoned under 35 U.S.C. 371(d) is **GRANTED** as to the National Stage in the United States of America.

This application is being forwarded to the national stage office for preparation of a "NOTIFICATION OF ACCEPTANCE OF APPLICATION UNDER 35 U.S.C. 371 AND 37 CFR 1.494 OR 1.495" (Form PCT/DO/EO/903) showing a 35 U.S.C. 371 date of **29 September 2004**.



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